

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Petitioner,	:	
	:	
v.	:	
	:	
HAMILTON PARK HEALTH CARE	:	
CENTER,	:	No. 20-3133
CONFIDENCE MANAGEMENT SYSTEMS:	:	
AT HAMILTON PARK HEALTH CARE	:	
CENTER,	:	
	:	
Respondents,	:	
	:	

UNOPPOSED MOTION TO EXTEND TIME
TO FILE MOTION TO COMPEL RESPONSES
TO DISCOVERY REQUESTS AND FOR SANCTIONS

Following a status conference, on April 23, 2021, this Court ordered Respondents, by April 28, to file “supplemental responses to remedy the discovery deficiencies outlined in [the NLRB’s] April 12, 2021 Letter.” Those responses, a copy of which is appended hereto as **Exhibit 1**, fail to remedy numerous deficiencies the NLRB has previously identified. At this time, the NLRB anticipates that it will move to compel responses to at least 20 different interrogatories and requests for production. In addition, the NLRB intends to request

sanctions, but is cognizant of its obligation to tailor such request to the minimum sanctions necessary to cure the Respondents' misconduct.

In addition, attorneys for the NLRB face significant competing obligations and deadlines. Lead counsel for the NLRB, Paul A. Thomas, is currently advising the NLRB's Acting General Counsel as to responses to more than 30 cases challenging President Biden's removal of his predecessor General Counsel, and is also preparing for a May 14 oral argument in a major rulemaking case, *AFL-CIO v. NLRB*, D.C. Cir. No. 20-5233. He is also engaged in time-sensitive discovery negotiations in *NLRB v. 710 Long Ridge Road Operating Co. II, LLC*, No. 14-1725 (D.N.J.); and a recently-initiated and time-sensitive contempt mediation in *NLRB v. Station GVR Acquisition, LLC*, No. 18-71124 (9th Cir.). Co-counsel Molly G. Sykes is also involved in *AFL-CIO v. NLRB*, D.C. Cir. No. 20-5233, and is engaged in current litigation in an administrative subpoena enforcement case, *NLRB v. Arnold Walter Nursing and Rehabilitation Center*, 3:21-CV-02954 (D.N.J.), and a case alleging contempt for failure to abide by a court order enforcing an administrative subpoena, *NLRB V. Alaris Health at Hamilton Park*, 2:20-cv-02810 (D.N.J.).

Due to the foregoing obligations and the length of the motion that will be required, the NLRB respectfully requests a 14-day extension of time to file its Motion to Compel and for Sanctions, to May 19, 2021. Counsel for Respondents, Robert Manetta, states that the Respondents consent to the request.

Respectfully submitted,

Dated this 30th day of April
2021 at Washington, DC

NATIONAL LABOR RELATIONS
BOARD

/s/ Paul A. Thomas

Paul A. Thomas

Trial Attorney

Contempt, Compliance & Special
Litigation Branch

1015 Half Street, S.E., 4th Floor

Washington, D.C. 20003

(202) 273-3746

paul.thomas@nllrb.gov

CERTIFICATE OF COMPLIANCE

I certify that the foregoing contains 325 words of proportionally spaced, 14-point type, and the word-processing system used was Microsoft Word 2016.

/s/ Paul A. Thomas

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that the foregoing was filed on April 30, 2021 and served upon counsel of record for all parties via the Appellate CM/ECF system.

/s/ Paul A. Thomas

JASINSKI

A PROFESSIONAL CORPORATION | COUNSELORS-AT-LAW

www.jplawfirm.com

April 28, 2021

Via Electronic Mail [Molly.Sykes@nlrb.gov]

Molly Sykes, Esq.
National Labor Relations Board
Contempt, Compliance & Special Litigation Branch
1015 Half Street SE
Fourth Floor
Washington, D.C. 20003

**Re: *National Labor Relations Board v. Hamilton Park Health Care Center,
Confidence Management Systems, et al.*
Case No.: 18-1207 (3d Cir. 2018); 22-CA-161283, et al.**

Dear Ms. Sykes:

Responsive to your letter dated April 7, 2021 and without waiving prior objections, we supplement our responses as follows:

Interrogatory #1:

David F. Jasinski, Esq., is authorized to accept service for the following individuals: Chad Giampino, David Sussman and Kevin Woodard. Any documents can be served, and will be accepted without objection by David F. Jasinski, Esq., Jasinski, P.C.; 60 Park Place, 8th floor; Newark, New Jersey 07102; 973-824-9700.

Brian Powers is Vice President of Confidence Management Services. Peter Gerges is Director of Human Resources. The address for CMS Management Systems is 1420 East Linden Avenue; Linden, New Jersey 07036; 908-912-2700.

Mr. Powers has knowledge of the facts surrounding the information CMS provided to the Union in this and other related litigations.

Interrogatory #2:

This case involved information request to the Union. Such information was provided by the Facility to the Union. Response addressed the fact that administrative individuals may have assisted in gathering information at the request of the identified individuals. The individuals identified were aware of the Union requests and information provided.

60 Park Place, 8th Floor
Newark, NJ 07102
ph 973-824-9700 | fax 973-824-6061

308 South New York Road, Suite B
Galloway, NJ 08205
ph 609-677-9800 | fax 609-677-9811

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In addition, Brian Powers, CMS has knowledge of the allegations in the Petition and the affirmative defenses. These individuals can be contacted at the address provided in the response to Interrogatory #1.

Interrogatory #3:

The evidence supporting the affirmative defense was provided to the Union by the Facility and CMS which included all payroll registers for the requested period for all bargaining unit members which set forth names, positions, employee status (full-time, part-time) rates of pay, hours worked, overtime, PTO, holidays, vacations, yearly earnings for each employee, dues, contributions to the contractual funds (medical and pension). The Facility provided remittance reports, personnel practices, including employee handbook, benefit rider, summary plan description, operating contracts, work schedules and job descriptions. Notices were posted at the Facility. The \$30,000.00 payment was made to the Union in full satisfaction of compensatory damages.

Certain information requested by the Union does not exist, i.e, organizational charts for the Facility.

Interrogatory #4:

See response to Interrogatory #3 above.

Interrogatory #5:

See response to Interrogatory #3 above.

Interrogatory #6:

See response to Interrogatory #3 above.

Interrogatory #7:

See response to Interrogatory #3 above.

Interrogatory #8:

See response to Interrogatory #3 above.

Interrogatory #9:

See response to Interrogatory #3 above.

Interrogatory #10:

See response to Interrogatory #3 above.

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Interrogatory #11:

See response to Interrogatory #1 above.

Interrogatory #12:

See response to Interrogatory #1 above.

Interrogatory #13:

See response to Interrogatory #1 above.

Interrogatory #14:

See response to Interrogatory #1 above.

Interrogatory #15:

See Certification of Chad Giampiano

Interrogatory #16:

See response to Interrogatory #1 above.

Interrogatory #17:

See Certification of Brian Powers attached hereto.

Interrogatory #18:

See response to Interrogatory #1 above.

Interrogatory #19:

This information can be obtained through depositions of individuals identified in response to Interrogatory #1 above.

Interrogatory #20:

See response to Interrogatory #1 above.

Interrogatory #21:

See response to Interrogatory #1 above.

Document Request #1:

The documents provided to the Union are responsive to the Union's demands and we assert are responsive. We have taken steps to ensure the information was complete and actions compliant with the Court Order, including full payment of the compensatory damages to the Union.

Document Request #7:

Steps taken to ensure information given to the Union entailed conversations between the attorneys for the Respondents and the client representatives. The actual search entailed the review of the documents provided to the Union in response to the requested information. These documents were manual payroll ledgers and other personnel documents.

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Document Request #8:

That information is requesting privileged documents and information.

Document Request #9:

See response to Document Request #8 above.

Document Request #11:

See response to Document Request #1 above.

We will be glad to meet and confer concerning these responses. As I have stated, we are not being obstructionist.

Sincerely,

JASINSKI, P.C.

DAVID F. JASINSKI

JASINSKI

CERTIFICATION

BRIAN POWERS, being duly sworn depose and say:

1. I am Vice-President of Confidence Management Services. We are a small company that provides services for LTC facilities in New Jersey. In this capacity, I am responsible for the servicing of a number of accounts with healthcare facilities. Alaris Health at Hamilton Park is one such account.
2. We provide housekeeping services for Alaris Health at Hamilton Park. There are approximately fifteen housekeeping employees who provide services at this Facility. These employees are members of 1199 SEIU.
3. CMS has honored the terms of the CBA contract with the Facility, paid wages and made appropriate contributions to Health and Pension Funds pursuant to the CBA.
4. David Jasinski, an attorney that handles labor matters for Alaris Health at Hamilton Park, requested I review information that was requested by the Union. This information, which included payroll ledgers contained names of employees, positions, status, all hours of work, rates of pay, overtime and shifts. It is an all encompassing document.
5. Mr. Jasinski requested that I repeat the steps for information previously provided to ensure that we have provided all of the information in our possession. Some requested information does not exist. We are not in possession of the SPD of the Union's health plan or the pension plan. We make the contributions. I have never seen this information.
6. The requested information was embedded in the payroll ledgers and the information forwarded to the Union. For instance, reference to lists reflecting employees' use of paid time are not kept separate. They are contained in the ledgers. We complied with the contract which set forth the PTO. Other information included when employment ends is also obtained from the ledgers. The requested contracts were provided and CMS assumed the housekeeping department in the July, 2013.
7. Peter Gerges, who works with me, reviewed the requested information and provided it to the Union.

I hereby declare that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.



Date: 4/28/21

BRIAN POWERS